

ST 00-0058-GIL 03/17/2000 SERVICE OCCUPATION TAX

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. See 86 Ill. Adm. Code 140.101. (This is a GIL).

March 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I POSED THE FOLLOWING QUESTION TO ONE OF YOUR IDOR AGENTS OVER THE 800 LINE BUT HE COULD NOT PROVIDE THE ANSWER AND SUGGESTED I CONTACT YOUR OFFICE FOR A WRITTEN OPINION.

THE QUESTION RELATES TO SALES TAX ON COMMISSIONED ARTWORK. I HAD BEEN TOLD IN 2 PREVIOUS CONTACTS OVER THE 800 LINE THAT AN ARTIST WHO CREATES ORIGINAL COMMISSIONED ARTWORK CAN TAKE HIS LABOR AS A DEDUCTION FROM GROSS SALES ON AN ST-1 AT LINE 9(C) OF THE WORKSHEET FOR LINE 2, WHICH IN ESSENCE NETS TO SALES TAX ONLY ON MATERIALS AND SUPPLIES AS PART OF THE ARTWORK.

CAN YOU PROVIDE VERIFICATION OF THIS FOR ME. I HAVE RESEARCHED THE REGULATIONS, PARTICULARLY IN SECTION 130, BUT CAN FIND NO SPECIFIC REFERENCE TO COMMISSIONED ARTWORK THAT WOULD SATISFY A NUMBER OF ARTISTS IN AN ARTS INCUBATOR FOR WHOM THIS MAY HAVE DRAMATIC IMPACT.

PLEASE ADVISE AT YOUR EARLIEST CONVENIENCE.

Please be advised that in general, sales of artwork are transfers of tangible personal property subject to the Retailers' Occupation Tax. The Retailers' Occupation Tax is based on the seller's gross receipts from sale, i.e., on the entire selling price. See 86 Ill. Adm. Code 130.101, enclosed. In order for sales of artwork not to be subject to Retailers' Occupation Tax, they must be of no commercial value to anyone other than the purchasers.

An example of this type of artwork would be a commissioned portrait of the purchaser. It should be noted that sales of commissioned portraits to anyone other than the person for whom the artwork was commissioned, would be sales at retail because the art has commercial value to someone other than the purchasers. When artists are commissioned to do artwork, (e.g., a portrait), which will be of no commercial value to anyone other than the purchasers, any tangible personal property transferred as an incident of rendering service (e.g., paint and canvas) is subject to the Service Occupation Tax. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered under Section 2a of the Retailers' Occupation Tax Act because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of

tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Please note that the Department has proposed an amendment to 86 Ill. Adm. Code 130.1910, Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles, that includes a special provision regarding artwork. You can access this proposed rule from the Department's website.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.